

d) laminating said first and second strips only over an axially-oriented centrally disposed area to form an integral tear strip portion.--

Withdraw claims 12 to 14, without prejudice.

REMARKS

Relative to Examiner's requirement for an election of a single disclosed species, applicant elects Figures 1 to 3, inclusive. Readable on this species are the newly inserted claims 15 to 25, inclusive.

Applicant traverses Examiner's position to the effect that the invention of claim 11 is distinct from claims 1 to 10. Examiner's statement that in the instant case, the article can be made by a materially different process, such as by laminating the second strip over an area other than the central portion of the first strip. Such an article would be outside the scope of the invention and would be inoperable for the reason that the edges of the tearstrip would no longer be defined. The problem here is that Examiner is not talking about the disclosed article, but rather one typically illustrated in Applicant's prior patent No. 6,041,202 cited by Examiner.

The subject matter of claims 12 to 14, now withdrawn, is reserved for inclusion in a divisional application to be subsequently filed.

Relative to paragraph 3 of page 3 of Examiner's action, it is submitted that there is evidence now of record, namely the specification, which shows that the species of Figure 4 is an

obvious variant of the type referred to in the preamble to the claims. Applicant agrees with Examiner that if one of the supposed inventions is unpatentable, the evidence may be used in a rejection of the other invention. However, the art of record does not anticipate the presently claimed subject matter.

Applicant confirms the provisional election made with traverse relative to withdrawn claim 11, now replaced by claim 25. As presently presented, the claimed method reads only on the disclosed embodiment, and has no utility for the making of prior art articles.

Relative to paragraph 6, page 4 of Examiner's action, Examiner is advised that the presently claimed subject matter is the invention of both Applicants.

Relative to paragraph 7, page 4, 37 CFR 1.52(c) has been considered. It is noted that this provision is not mandatory, the Section stating that the alteration should be initialed and dated. In this particular case, the mere cancellation of misspelled material is not considered sufficiently serious to warrant execution of a new oath or declaration.

Relative to paragraph 8, page 4, Applicant submits a new page 6, the error being the result of computer word-processing, which is regretted.

The informality mentioned in paragraph 9 of Examiner's action has been corrected.

Examiner has rejected claims 1 to 10 under Section 112, second paragraph, as being indefinite, and rather than amend the claims, it is believed that Examiner will be assisted in the understanding of the invention by presenting an entirely new set of claims, including claim 25, which replaces claim 11. It is believed that all of Examiner's objections have been addressed in these new claims.

Examiner has rejected claims 1 to 7 under the "judicially created doctrine" of obviousness-type double patenting as being unpatentable over claims 9 to 13 of Applicant's prior patent No. 6,041,202. Counsel is not aware of such doctrine, and Examiner has cited no authorities to support such position. Accordingly, Applicant has treated the rejection as a Section 103 rejection based on this patent.

It is believed that Examiner does not understand the scope of the invention covered by the subject patent. Although the additional fibrous material may be provided in the form of a continuous strip as set forth in claim 13, the lamination of this strip to the base lamina is not along an axially centrally disposed area to form a tear strip of double thickness. Rather, the earlier invention provides for additional material to improve the bursting strength of the seal, and lamination is at spaced intervals in a transversely-extending direction as best seen from a consideration of Figure 8 in sheet 3 of the drawings. Referring to claim 9, it is noted that the single strip recited includes transversely-oriented areas of relatively greater fusion which is not present in

VERSION WITH MARKINGS TO SHOW CHANGE MADE

Referring to the alternate form of the embodiment shown in Figure 4, there have been laminated to the first end edge 22A a generally C-shaped reinforcing lamina of material of thickness equivalent to three to five times the thickness of the seal. At an opposite edge 23 there is a second C-shaped member which may be made of foam material and bonded only at the longitudinally-extending portions thereof to provide a guiding slot for the tear strip. When made of foam material, it exerts a slight compressive force upon the tear strip to preserve any part of the tearing action which has already been made.

Turning now to Figure 4, a first end edge 22B ~~22C~~ locates a C-shaped reinforcing member 40 including axially oriented portions 41 and 42 and a transversely extending member 43, all of which are adhered to the end of the seal outwardly of the area of commencement of tearing, wherein the above-mentioned crumpling as the seal is unintentionally torn from its engagement surrounding the mouth of the toner occurs. A similar C-shaped member 44 is positioned at the opposite edge 23A including axially oriented portions 45 and 46 which are adhered to the seal, and a transversely extending portion 47 which is not adhered to provide a guide for the tear strip prior to and during the time it is pulled.

the instant disclosure. The dependent claims 10 to 13 by reference also include this limitation. Relative to claim 13, the recited continuous strip extends the length of the seal, but it is laminated only in transversely-oriented areas of greater fusion. The present claims are thus not readable in any way on the claims of the earlier patent.

Applicant is presently filing formal drawings which are the substantial equivalent of the informal drawings presently on file.

Absent any other pertinent prior art, it is hoped, upon reconsideration, that Examiner will find himself in a position to pass the application to issue. Such action is earnestly solicited.

Respectfully,

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20231, on 8/13/02  
Dated 8/13/02 By: Charles E. Temko